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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/296,582	04/23/1999	JOHN R. PEERY	000952066	8609

21839 7590 06/17/2002

BURNS DOANE SWECKER & MATHIS L L P  
POST OFFICE BOX 1404  
ALEXANDRIA, VA 22313-1404

EXAMINER

MAYNARD, JENNIFER J

ART UNIT	PAPER NUMBER
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3763

DATE MAILED: 06/17/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/296,582

Applicant(s)

PEERY, JOHN R. *Ch*

Examiner

Jennifer J Maynard

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 June 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☒ Newly proposed or amended claim(s) 3-6 and 21-27 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: (see attached).
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 3-6 and 21-27.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1,2 and 7-17.Claim(s) withdrawn from consideration: 18.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

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*Response to Arguments*

Applicant's arguments filed 05 June 2002 have been fully considered but they are not persuasive.

Applicant asserts that the prior art (Utterberg (US 5,536,259 A)) utilized to reject Claims 9-16 discloses a second cut surface (leading edge) defined along a right hand forward portion of the oval tube edge with the angle of the cut being slightly canted clockwise at a 14 ½ degree angle so that the outer edge of the edge (22) of the second cut (20) is slightly lower than the inner edge to provide a cutting edge. The Examiner does not disagree with the above assertion as it pertains to the description of the formation of Utterberg's beveled edge. However it is the Examiner's interpretation with respect to Figure 2, that the trailing edge is defined as the proximal portion (adjacent to heel (38)) of the needle tip, proximal relative to the ridge (36) while the leading edge is defined as the distal region (adjacent to forward point (18)) of the needle tip, distal the ridge. It is clear upon viewing Figure 2 that the trailing edge's acute angle is less than the leading edge's acute angle, as the taper of the trailing edge is more gradual and less steep relative to the leading edge. The Examiner has not evaluated the angle of the beveled edge of Utterberg as anticipating any part of Applicant's invention other than that of serving as a means for preventing coring or tearing of the tissue during insertion thereof. Therefore, Applicant's arguments fail to overcome the rejection of record.

Additionally, Applicant addresses the rejection of Claims 1, 2, 7, 8 and 17 as overcome by a declaration filed under 37 C.F.R. 1.131 by John R. Peery, however no such declaration has been received and therefore has not been considered.

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*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer J Maynard whose telephone number is 703.305.1356.

The examiner can normally be reached on 10:30 am-8:30 pm; 1st Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 703.308.3552. The fax phone numbers for the organization where this application or proceeding is assigned are 703.872.9302 for regular communications and 703.872.9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.0858.

J Maynard  
June 11, 2002

*Maynard*

*Brian L. Casler*  
BRIAN L. CASLER  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700